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AMENDED IN ASSEMBLY JULY 2, 2008

AMENDED IN SENATE MAY 23, 2008

AMENDED IN SENATE APRIL 30, 2008

AMENDED IN SENATE MARCH 27, 2008

SENATE BILL

No. 1425

Introduced by Senators Steinberg and Simitian
(Coauthor: Senator Torlakson)
(Coauthor: Assembly Member Arambula)

February 21, 2008

An act to amend Section 1798.24 of the Civil Code, and to add ~~Sections 49079.5, 49079.6, and 49079.7~~ *Section 49079.5* to the Education Code, relating to pupil data.

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, as amended, Steinberg. Pupil data.

(1) Federal law requires schools and educational agencies receiving federal financial assistance to comply with specified provisions regarding the release of pupil data. State law prescribes additional rules relating to the authorized release of pupil data.

Under existing law, the State Department of Education is required to contract for the development of proposals to provide for the retention and analysis of longitudinal pupil achievement data on the tests administered pursuant to *the* Standardized Testing and Reporting Program (STAR), the English language development tests, and the high school exit exam. Existing law provides that this longitudinal achievement data is known as the California Longitudinal Pupil

Achievement Data System (~~CALPADS~~). Under existing law, ~~CALPADS~~ *the California Longitudinal Pupil Achievement Data System* is required to be used to accomplish specified goals, including providing school districts and the department access to the data necessary to comply with federal reporting requirements, as specified, providing a better means of evaluating educational progress and investments over time, providing local educational agencies information that can be used to improve pupil achievement, and providing an efficient, flexible, and secure means of maintaining longitudinal statewide pupil data.

This bill would ~~require~~ *authorize* the department, to the extent permissible under the federal Family Educational Rights and Privacy Act (FERPA), ~~its implementing regulations, and other~~ state law, to conduct pupil data management on behalf of local educational agencies. The bill would state the intent of the Legislature to accomplish specified objectives related to these provisions, including, but not limited to, complying with the United States Constitution and all applicable federal laws, including FERPA and its implementing regulations, the California Constitution, and all applicable state laws and their implementing regulations, in order to protect pupil rights and privacy. The bill would authorize local educational agencies to access specified data via ~~CALPADS~~ *the California Longitudinal Pupil Achievement Data System (CALPADS)*, and, to the extent permissible under state and federal law, to share specified data via CALPADS. The bill would require the department to establish, no earlier than July 1, 2009, an education data team to act as an institutional review board to review and respond to all requests for pupil data, ~~and, to the extent possible, .~~ *The bill would require the department, to the extent feasible, to redirect department personnel for the purposes of the education data team rather than establishing new positions. The bill would make the department responsible for data management decisions for data under its jurisdiction and make the department and a local educational agency liable for data management decisions for data under its jurisdiction, as specified jointly liable for any data management decisions in which the department and a local educational agency participate jointly, as specified.* The department would be required to adopt regulations for the ~~institutional review board, as specified. The department would be required to perform the duties specified in these provisions with its existing resources~~ *education data team by July 1, 2009. The department would, with certain exceptions, be authorized to assess a fee on research applicants to cover prescribed costs.*

The bill also would ~~require the Legislative Analyst's Office to convene a staff working group~~ *state the intent of the Legislature to convene a working group* to make recommendations related to the ability of the state to collect, transfer, and use pupil record information and other educational data. The bill also would ~~require the California Research Bureau of the California State Library, on or before June 1, 2009, to prepare and submit a report to the Legislature providing a review of existing literature analyzing~~ *state the intent of the Legislature to obtain and examine existing literature, research, litigation, and other materials, including analyses of other states' approaches to balancing the benefits of increased access to individually identifiable pupil data and other education data against the increased risk of loss of privacy.*

(2) Existing law prohibits a state agency from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains. Existing law provides exceptions to this prohibition, including authorizing a state agency to release personally identifiable data to a nonprofit educational institution conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency. Existing law authorizes the CPHS to enter into written agreements to enable other institutional review boards to provide the required data security approvals.

This bill would require the CPHS to enter into a written agreement with the institutional review board to provide the required data security approvals for the release of data to researchers, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1798.24 of the Civil Code is amended
- 2 to read:
- 3 1798.24. No agency may disclose any personal information in
- 4 a manner that would link the information disclosed to the individual
- 5 to whom it pertains unless the information is disclosed, as follows:
- 6 (a) To the individual to whom the information pertains.
- 7 (b) With the prior written voluntary consent of the individual
- 8 to whom the record pertains, but only if that consent has been

1 obtained not more than 30 days before the disclosure, or in the
2 time limit agreed to by the individual in the written consent.

3 (c) To the duly appointed guardian or conservator of the
4 individual or a person representing the individual if it can be proven
5 with reasonable certainty through the possession of agency forms,
6 documents or correspondence that this person is the authorized
7 representative of the individual to whom the information pertains.

8 (d) To those officers, employees, attorneys, agents, or volunteers
9 of the agency that has custody of the information if the disclosure
10 is relevant and necessary in the ordinary course of the performance
11 of their official duties and is related to the purpose for which the
12 information was acquired.

13 (e) To a person, or to another agency where the transfer is
14 necessary for the transferee agency to perform its constitutional
15 or statutory duties, and the use is compatible with a purpose for
16 which the information was collected and the use or transfer is
17 accounted for in accordance with Section 1798.25. With respect
18 to information transferred from a law enforcement or regulatory
19 agency, or information transferred to another law enforcement or
20 regulatory agency, a use is compatible if the use of the information
21 requested is needed in an investigation of unlawful activity under
22 the jurisdiction of the requesting agency or for licensing,
23 certification, or regulatory purposes by that agency.

24 (f) To a governmental entity when required by state or federal
25 law.

26 (g) Pursuant to the California Public Records Act (Chapter 3.5
27 (commencing with Section 6250) of Division 7 of Title 1 of the
28 Government Code).

29 (h) To a person who has provided the agency with advance,
30 adequate written assurance that the information will be used solely
31 for statistical research or reporting purposes, but only if the
32 information to be disclosed is in a form that will not identify any
33 individual.

34 (i) Pursuant to a determination by the agency that maintains
35 information that compelling circumstances exist that affect the
36 health or safety of an individual, if upon the disclosure notification
37 is transmitted to the individual to whom the information pertains
38 at his or her last known address. Disclosure shall not be made if
39 it is in conflict with other state or federal laws.

1 (j) To the State Archives as a record that has sufficient historical
2 or other value to warrant its continued preservation by the
3 California state government, or for evaluation by the Director of
4 General Services or his or her designee to determine whether the
5 record has further administrative, legal, or fiscal value.

6 (k) To any person pursuant to a subpoena, court order, or other
7 compulsory legal process if, before the disclosure, the agency
8 reasonably attempts to notify the individual to whom the record
9 pertains, and if the notification is not prohibited by law.

10 (l) To any person pursuant to a search warrant.

11 (m) Pursuant to Article 3 (commencing with Section 1800) of
12 Chapter 1 of Division 2 of the Vehicle Code.

13 (n) For the sole purpose of verifying and paying government
14 health care service claims made pursuant to Division 9
15 (commencing with Section 10000) of the Welfare and Institutions
16 Code.

17 (o) To a law enforcement or regulatory agency when required
18 for an investigation of unlawful activity or for licensing,
19 certification, or regulatory purposes, unless the disclosure is
20 otherwise prohibited by law.

21 (p) To another person or governmental organization to the extent
22 necessary to obtain information from the person or governmental
23 organization as necessary for an investigation by the agency of a
24 failure to comply with a specific state law that the agency is
25 responsible for enforcing.

26 (q) To an adopted person and is limited to general background
27 information pertaining to the adopted person's natural parents,
28 provided that the information does not include or reveal the identity
29 of the natural parents.

30 (r) To a child or a grandchild of an adopted person and
31 disclosure is limited to medically necessary information pertaining
32 to the adopted person's natural parents. However, the information,
33 or the process for obtaining the information, shall not include or
34 reveal the identity of the natural parents. The State Department of
35 Social Services shall adopt regulations governing the release of
36 information pursuant to this subdivision by July 1, 1985. The
37 regulations shall require licensed adoption agencies to provide the
38 same services provided by the department as established by this
39 subdivision.

1 (s) To a committee of the Legislature or to a Member of the
2 Legislature, or his or her staff when authorized in writing by the
3 member, where the member has permission to obtain the
4 information from the individual to whom it pertains or where the
5 member provides reasonable assurance that he or she is acting on
6 behalf of the individual.

7 (t) (1) To the University of California or a nonprofit educational
8 institution conducting scientific research, provided the request for
9 information is approved by the Committee for the Protection of
10 Human Subjects (CPHS) for the California Health and Human
11 Services Agency (CHHSA) or an institutional review board, as
12 authorized in paragraphs (4) and (5). The approval required under
13 this subdivision shall include a review and determination that all
14 the following criteria have been satisfied:

15 (A) The researcher has provided a plan sufficient to protect
16 personal information from improper use and disclosures, including
17 sufficient administrative, physical, and technical safeguards to
18 protect personal information from reasonable anticipated threats
19 to the security or confidentiality of the information.

20 (B) The researcher has provided a sufficient plan to destroy or
21 return all personal information as soon as it is no longer needed
22 for the research project, unless the researcher has demonstrated
23 an ongoing need for the personal information for the research
24 project and has provided a long-term plan sufficient to protect the
25 confidentiality of that information.

26 (C) The researcher has provided sufficient written assurances
27 that the personal information will not be reused or disclosed to
28 any other person or entity, or used in any manner, not approved
29 in the research protocol, except as required by law or for authorized
30 oversight of the research project.

31 (2) The CPHS or institutional review board shall, at a minimum,
32 accomplish all of the following as part of its review and approval
33 of the research project for the purpose of protecting personal
34 information held in agency databases:

35 (A) Determine whether the requested personal information is
36 needed to conduct the research.

37 (B) Permit access to personal information only if it is needed
38 for the research project.

39 (C) Permit access only to the minimum necessary personal
40 information needed for the research project.

1 (D) Require the assignment of unique subject codes that are not
2 derived from personal information in lieu of social security
3 numbers if the research can still be conducted without social
4 security numbers.

5 (E) If feasible, and if cost, time, and technical expertise permit,
6 require the agency to conduct a portion of the data processing for
7 the researcher to minimize the release of personal information.

8 (3) Reasonable costs to the agency associated with the agency's
9 process of protecting personal information under the conditions
10 of CPHS approval may be billed to the researcher, including, but
11 not limited to, the agency's costs for conducting a portion of the
12 data processing for the researcher, removing personal information,
13 encrypting or otherwise securing personal information, or assigning
14 subject codes.

15 (4) The CPHS may enter into written agreements to enable other
16 institutional review boards to provide the data security approvals
17 required by this subdivision, provided the data security
18 requirements set forth in this subdivision are satisfied.

19 (5) Notwithstanding paragraph (4), the CPHS shall enter into a
20 written agreement with the institutional review board established
21 pursuant to Section 49079.5 of the Education Code. The agreement
22 shall authorize, commencing on July 1, 2009, or the date upon
23 which the written agreement is executed, whichever is later, that
24 board to provide the data security approvals required by this
25 subdivision, provided the data security requirements set forth in
26 this subdivision and the act specified in paragraph (1) of
27 subdivision (a) of Section 49079.5 of the Education Code are
28 satisfied.

29 (u) To an insurer if authorized by Chapter 5 (commencing with
30 Section 10900) of Division 4 of the Vehicle Code.

31 (v) Pursuant to Section 1909, 8009, or 18396 of the Financial
32 Code.

33 This article shall not be construed to require the disclosure of
34 personal information to the individual to whom the information
35 pertains when that information may otherwise be withheld as set
36 forth in Section 1798.40.

37 SEC. 2. Section 49079.5 is added to the Education Code, to
38 read:

39 49079.5. (a) The Legislature recognizes that a longitudinal
40 pupil data system could provide direct and tangible benefits to

1 pupils, educators, policymakers, and the public. It is the intent of
2 the Legislature, in enacting this section, to accomplish the
3 following:

4 (1) Comply with the United States Constitution and all
5 applicable federal laws, including the Family Educational Rights
6 and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) (FERPA) and its
7 implementing regulations (34 C.F.R. 99).

8 (2) Comply with the United States Constitution and all
9 applicable state laws and their implementing regulations, including,
10 but not limited to, Section 1798.24 of the Civil Code and
11 subdivision (c) of Section 10601.5 of this code.

12 (3) ~~Create~~ *Further* an environment in which the department and
13 the California Longitudinal Pupil Achievement Data System
14 ~~(CALPADS) become resources rather than burdens for local~~
15 ~~(CALPADS) serve as resources for local~~ educational agencies.

16 (4) Promote a culture of continuous improvement through
17 collaboration and informed decisionmaking at the classroom,
18 school, district, state, and policymaker level.

19 (5) Minimize the anticipated workload increase on the
20 department that may be generated by an increased number of data
21 requests as CALPADS becomes operational, by establishing clear
22 guidance on data access and an efficient process for responding
23 to requests for access.

24 (6) Pursuant to FERPA and as defined in Section 1798.24 of
25 the Civil Code, make pupil data available to qualified researchers
26 from nonprofit organizations while appropriately protecting the
27 privacy of individual pupils.

28 (b) Commencing on July 1, 2009, and to the extent ~~possible~~
29 ~~under FERPA, its implementing regulations, and Section 1798.2~~
30 ~~of the Civil Code, the department shall act on behalf of local~~
31 ~~educational agencies under FERPA, including providing access~~
32 *permissible under FERPA and its implementing regulations and*
33 *Section 1798.24 of the Civil Code, the department may act on*
34 *behalf of local educational agencies under FERPA, including*
35 *providing access* to and protecting the security of pupil data.

36 (c) Commencing on July 1, 2009, and to the extent ~~possible~~
37 *permissible* under FERPA and its implementing regulations, the
38 department, on behalf of local educational agencies, may release
39 pupil data to qualified researchers from nonprofit organizations,
40 pursuant to subdivision (t) of Section 1798.24 of the Civil Code.

1 (d) No earlier than July 1, 2009, the department shall establish
2 an education data team within its staff to act as an institutional
3 review board pursuant to subdivision (t) of Section 1798.24 of the
4 Civil Code, and to review and respond to all requests for pupil
5 data. The department, *to the extent feasible*, shall redirect
6 department personnel for the purposes of the education data team
7 rather than establish new positions.

8 (1) Pursuant to subdivision (t) of Section 1798.24 of the Civil
9 Code, the education data team shall enter into a signed agreement
10 with the Committee for the Protection of Human Subjects for the
11 California Health and Human Services Agency to enable the
12 education data team to provide the data security approvals required
13 by that section. The agreement shall authorize the education data
14 team to release individually identifiable data to qualified
15 researchers and other state and local agencies, as defined and
16 permitted under state *and* federal law.

17 (2) The department shall commence preparations for the creation
18 of the education data team at least one month before the CALPADS
19 pilot program is scheduled to begin.

20 ~~(3) No later than one month before the CALPADS pilot program~~
21 ~~is scheduled to end, the department shall adopt regulations for the~~

22 (3) *By July 1, 2009, the department shall adopt regulations for*
23 *the education data team that shall include, but not be limited to,*
24 *all of the following:*

25 (A) Processes for all of the following:

26 (i) Application for access to data.

27 (ii) Response to applications for access to data, including
28 timelines.

29 (iii) Appeal of denials for access to data.

30 (B) Criteria to be used for approving the release of data,
31 including, but not limited to, all of the following:

32 (i) The release of data to researchers from nonprofit
33 organizations, pursuant to FERPA and subdivision (t) of Section
34 1798.24 of the Civil Code, that are conducting research for the
35 purpose of improving instruction to pupils.

36 (ii) Limitations on data released, including, but not limited to,
37 releasing to researchers only data necessary to meet research
38 objectives.

1 (iii) Requiring an agreement by applicants to comply with state
2 and federal privacy and disclosure laws and regulations, and
3 existing laws regarding data control and security.

4 (C) (i) Any reasonable fees or charges that may be imposed
5 upon *research* applicants to cover costs of responding to
6 time-intensive requests.

7 (ii) *Fees or charges imposed upon an applicant pursuant to this*
8 *subparagraph shall not exceed the actual costs incurred by the*
9 *department in responding to the applicant's request.*

10 (iii) *No fees or charges shall be imposed pursuant to this*
11 *subparagraph upon any state agency, except for fees or charges*
12 *related to the release of data for research purposes to the*
13 *University of California, the California State University, or the*
14 *Chancellor of the California Community Colleges.*

15 (D) Rules for data recipients regarding data control and
16 destruction of data after use, to guard against any misuse of data,
17 including third-party transfer.

18 ~~(e) Local educational agencies may access data via CALPADS~~
19 ~~concerning pupils enrolled in their school or transferring to their~~
20 ~~school from another school.~~

21 (e) *A local educational agency may access data via CALPADS*
22 *concerning pupils enrolled within the local educational agency or*
23 *transferring to the local educational agency from another local*
24 *educational agency.*

25 (f) In order to promote a culture of collaboration and data
26 analysis and to increase the identification and sharing of effective
27 practices, local educational agencies may share data with each
28 other via CALPADS to the extent permissible under state law and
29 federal law.

30 (g) The department is responsible for data management decisions
31 for the data under its jurisdiction. The department, rather than a
32 local educational agency, shall be liable for its decisions relating
33 to the management of data under its control according to applicable
34 provisions of law. If the department and a local educational agency
35 participate jointly in the management of data, both the department
36 and the local educational agency shall be liable to the extent of
37 their involvement according to applicable provisions of law. This
38 subdivision does not limit the liability of a researcher who obtains
39 data pursuant to this section and who releases that data in violation

1 of either FERPA or its implementing regulations, or subdivision
2 (t) of Section 1798.24 of the Civil Code.

3 ~~(h) The department shall perform the duties specified in this~~
4 ~~section with its existing resources.~~

5 SEC. 3. ~~Section 49079.6 is added to the Education Code, to~~
6 ~~read:~~

7 ~~49079.6.—(a) The Legislative Analyst’s Office shall convene~~
8 ~~a staff working group including bipartisan representation from the~~
9 ~~appropriate education and judiciary committees of the Legislature,~~
10 ~~as well as other interested parties.~~

11 ~~(b) The working group shall make recommendations related to~~
12 ~~the ability of the state to collect, transfer, and use pupil record~~
13 ~~information and other educational data, including, but not limited~~
14 ~~to, issues related to providing access to CALPADS data with~~
15 ~~respect to the interactions between state and federal law on the~~
16 ~~issue of protection of pupil privacy.~~

17 ~~(c) The office shall coordinate the efforts of this working group~~
18 ~~with those of any other working group convened pursuant to law~~
19 ~~for the purpose of examining issues related to education data~~
20 ~~governance.~~

21 ~~(d) The office shall report the recommendations of the working~~
22 ~~group convened pursuant to this section to the Legislature on or~~
23 ~~before June 1, 2009.~~

24 SEC. 4. ~~Section 49079.7 is added to the Education Code, to~~
25 ~~read:~~

26 ~~49079.7.—On or before June 1, 2009, the California Research~~
27 ~~Bureau of the California State Library shall prepare and submit a~~
28 ~~report to the Legislature providing a review of existing literature,~~
29 ~~research, litigation, and other materials and analyzing other states’~~
30 ~~approaches to balancing the benefits of increased access to~~
31 ~~individually identifiable pupil data and other education data against~~
32 ~~the increased risk of loss of privacy.~~

33 SEC. 3. *It is the intent of the Legislature to accomplish both*
34 *of the following prior to June 1, 2009:*

35 *(a) Convene a staff working group including bipartisan*
36 *representation from the appropriate education and judiciary*
37 *committees of the Legislature, the Legislative Analyst’s Office, as*
38 *well as other interested parties to make recommendations related*
39 *to the ability of the state to collect, transfer, and use pupil record*
40 *information and other education data, including, but not limited*

1 *to, issues related to providing access to CALPADS data with*
2 *respect to interactions between state and federal law regarding*
3 *the issue of protection of pupil privacy.*

4 *(b) Obtain and examine existing literature, research, litigation,*
5 *and other materials, including analyses of other states' approaches*
6 *to balancing the benefits of increased access to individually*
7 *identifiable pupil data and other education data against the*
8 *increased risk of loss of privacy.*